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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 MATTHEW POTURICH, et al.,

11 Plaintiffs,

12 v.

13 ALLSTATE INSURANCE CO., et al.,

14 Defendants.
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Case No. EDCV 15-0081-GW (KKx)

ORDER GRANTING ALLSTATE'S
MOTION TO COMPEL AND MOTION
FOR MONETARY SANCTIONS

16 On June 19, 2015, Defendant Allstate Insurance Company ("Defendant") filed a
17 Motion to Compel Plaintiffs to Respond to Written Discovery and Produce Documents
18 and Motion for Monetary Sanctions. Plaintiffs Matthew Poturich and Teresa Poturich
19 ("Plaintiffs") have failed to file a timely Opposition. For the reasons discussed below,
20 the Court **GRANTS** both motions and sanctions Plaintiffs in the amount of \$2,960.00 as
21 a result of Plaintiffs' failure to comply with Court rules. The hearing on the motions
22 currently set for July 23, 2015 is **VACATED**.
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24 **I.**

25 **BACKGROUND**

26 On December 12, 2014, Plaintiffs filed suit against Defendant, alleging Defendant
27 breached an insurance policy it issued for Plaintiffs' home, by denying Plaintiffs' claim
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1 for “structural damage and loss of personal property” resulting from a water leak.¹ ECF
2 No. 16 at 11. Defendant alleges it denied Plaintiffs’ insurance claim because Plaintiffs
3 “made material misrepresentations” and refused to cooperate during an investigation of
4 the claim. ECF No. 17 at 8.

5 On April 30, 2015, Defendant served document requests and interrogatories on
6 Plaintiffs. ECF No. 25-1 at 2. Pursuant to a declaration filed by Defendant’s counsel, the
7 discovery “sought basic information about the nature of plaintiffs’ claim in the
8 complaint” and Plaintiffs’ deadline to respond was June 2, 2015. ECF No. 25-2 at 2.
9 Plaintiffs did not respond to Defendant’s discovery requests by June 2, 2015. *Id.*

10 Thus, on June 8, 2015, Defendant’s counsel sent a letter informing Plaintiffs “they
11 had waived objections by failing to timely respond to written discovery and requesting
12 responses to the written discovery without objections by June 16, 2015.” *Id.*
13 The June 16, 2015 letter also informed Plaintiffs’ counsel that “Allstate intended to
14 depose plaintiffs by the end of July and needed to review plaintiffs’ written responses
15 before those depositions.” *Id.* The letter concluded by inviting Plaintiffs’ counsel to
16 contact Defendant’s counsel if they wanted to discuss the matter. *Id.* Plaintiffs did not
17 respond to the June 8, 2015 letter. *Id.*

18 Thus, on June 17, 2015, Defendant’s counsel sent an email to Plaintiffs’ counsel
19 requesting a telephonic conference that same day to informally resolve the discovery
20 dispute. ECF Docket No. 25-2 at 2. Plaintiffs did not respond to the June 17, 2015
21 email. *Id.*

22 Thus, on June 18, 2015, Defendant’s counsel sent a second email to Plaintiffs’
23 counsel informing them Defendant would be “forced to file a motion to compel” if she
24 did not hear from them. *Id.* Plaintiffs did not respond to the June 18, 2015 email.

25 As a result of Plaintiffs’ failure to respond to discovery requests and failure to
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27 ¹ Plaintiffs also name various unknown “Doe” defendants, which are not relevant for
28 the purposes of this Order.

1 respond to defense counsel's communications attempting to resolve the discovery
 2 disputes, Defendant filed the instant Motions on June 19, 2015. ECF Docket No. 25. In
 3 the Motions, Defendant requests the Court order that: (1) Plaintiffs have waived all
 4 objections to Defendant's propounded discovery; (2) Plaintiffs must comply with Rule 33
 5 and respond to interrogatories without objections; (3) Plaintiffs must comply with Rule
 6 34 and respond to requests for production of documents and produce all responsive
 7 documents without objections; and (4) sanctions be awarded to Defendant in the amount
 8 of \$2,960.00 as a result of Plaintiffs' failure to comply with Court rules. *Id.* As of this
 9 date, Plaintiffs have failed to file an opposition to the Motions.

11 II.

12 DISCUSSION

13 A. The Motion to Compel is Granted.

14 1. Relevant Law

15 Pursuant to Federal Rule of Civil Procedure 26(b), parties may obtain discovery
 16 regarding any matter that is not privileged and is relevant to the claim or defense of any
 17 party involved in the pending action. Fed. R. Civ. P. 26(b)(1). The information sought
 18 need not be admissible at trial as long as it appears reasonably calculated to lead to the
 19 discovery of admissible evidence. *Id.* A "relevant matter" under Rule 26(b)(1) is any
 20 matter that "bears on, or that reasonably could lead to other matters that could bear on,
 21 any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S.
 22 340, 351, 98 S. Ct. 2380, 57 L. Ed. 2d 253 (1978) (citation omitted). Relevancy should
 23 be "construed 'liberally and with common sense' and discovery should be allowed unless
 24 the information sought has no conceivable bearing on the case." *Soto v. City of Concord*,
 25 162 F.R.D. 603, 610 (N.D. Cal. 1995) (quoting *Miller v. Pancucci*, 141 F.R.D. 292, 296
 26 (C.D. Cal. 1992)).

27 Pursuant to Federal Rules of Civil Procedure 33 and 34, a party may serve on any
 28 other party written interrogatories that "relate to any matter that may be inquired into

1 under Rule 26(b)” and requests for documents “within the scope of Rule 2b(b).” Fed. R.
 2 Civ. P. 33(a); Fed. R. Civ. P. 34(b)(2)(A). The responding party must serve its responses
 3 and any objections within 30 days after being served with the discovery request. Fed. R.
 4 Civ. P. 33(b)(2); Fed. R. Civ. P. 34(b)(2)(A). “It is well established that a failure to
 5 object to discovery requests within the time required constitutes a waiver of any
 6 objection.” *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th
 7 Cir. 1992) (quoting *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981)).

8 Finally, Federal Rule of Civil Procedure 37(a)(1) permits a party to move for an
 9 order compelling discovery, upon certification that the movant has in good faith
 10 conferred or attempted to confer with the opposing party in an effort to obtain the
 11 requested discovery without court action. Fed. R. Civ. P. 37(a)(1).

12 **2. Application**

13 Here, Defendant has served written interrogatories and requests for documents
 14 which seek “relevant matter.” The discovery sought is, thus, permissible under Rule 26.
 15 Plaintiffs have failed to respond, despite being offered an extension of time to do so.
 16 Moreover, Plaintiffs have failed to object within the time required and hence, have
 17 waived any objections. *Richmark Corp.*, 959 F.2d at 1473.

18 Accordingly, Defendant’s Motion to Compel is **GRANTED**. Plaintiffs must (1)
 19 comply with Rule 33 and respond to the served interrogatories without objections, and (2)
 20 comply with Rule 34 and respond to the served requests for production of documents and
 21 produce all responsive documents without objections.

22 **B. The Motion for Sanctions is Granted.**

23 Pursuant to Federal Rule of Civil Procedure 37(a)(5), if a discovery motion is
 24 granted, “the court *must*, after giving an opportunity to be heard, require the party . . .
 25 whose conduct necessitated the motion, the party or attorney advising that conduct, or
 26 both to pay the movant’s reasonable expenses incurred in making the motion, including
 27 attorney’s fees.” Fed. R. Civ. P. 37(a)(5) (emphasis added). In addition, the Local Rules
 28 provide strict procedures with which counsel must comply in bringing or opposing a

1 discovery motion, including requiring a pre-filing conference of counsel and joint
2 stipulation. L.R. 37 *et seq.* Additionally, Local Rule 37-4 specifically provides “[t]he
3 failure of any counsel to comply with or cooperate in the foregoing procedures may result
4 in the imposition of sanctions.”

5 Here, for the reasons discussed above, Defendant’s Motion to Compel is granted in
6 its entirety. Plaintiffs have failed to oppose, or otherwise respond to the Motion to
7 Compel or Motion for Sanctions. Thus, pursuant to Federal Rule of Civil Procedure
8 37(a)(5), sanctions are warranted.

9 In addition, Plaintiffs’ counsel have violated multiple provisions of the Local
10 Rules, including Local Rule 37-1 and Local Rule 37-2 by, *inter alia*, failing to participate
11 in the meet and confer or joint stipulation process. Either violation of the Local Rules
12 justifies sanctions. *See* L.R. 37-4; *see also Smith v. Frank*, 923 F.2d 139, 142 (9th Cir.
13 1991) (“For violations of the local rules, sanctions may be imposed”); *Gifford v.*
14 *Heckler*, 741 F.2d 263, 266 (9th Cir. 1984). Counsel’s failure to comply with the Local
15 Rules is particularly egregious in light of defense counsel’s repeated offers to extend the
16 time for counsel to respond to the requests. The Court further notes Plaintiffs were
17 previously sanctioned in this action by this Court due to their failure to comply with
18 Local Rule 37-2. *See* ECF Docket No. 21, Order Denying Ex Parte Application to Quash
19 Subpoenas.

20 Accordingly, Plaintiffs shall pay sanctions to Defendant in the amount of
21 \$2,960.00 as a result of Plaintiffs’ failure to comply with Court rules. *Nilsson, Robbins,*
22 *Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538, 1548 (9th Cir.
23 1988) (per curiam); *see also Estate of Gonzalez v. Hickman*, No. 5-660-MMM-RCx,
24 2007 WL 3238725, at *2 (C.D. Cal. 2007).

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III.

CONCLUSION

IT IS THEREFORE ORDERED that (1) Plaintiffs have waived all objections to Defendant's propounded discovery; (2) Plaintiffs must comply with Rule 33 and respond to interrogatories without objections; (3) Plaintiffs must comply with Rule 34 and respond to requests for production of documents and produce all responsive documents without objections; (4) Plaintiffs shall pay sanctions to Defendant in the amount of \$2,960.00 as a result of Plaintiffs' failure to comply with Court rules; and (5) the hearing on the motions currently set for July 23, 2015 is vacated.



DATED: July 15, 2015

HONORABLE KENLY KIYA KATO
UNITED STATES MAGISTRATE JUDGE